

# **CALIFORNIA CONFERENCE ON SELF-REPRESENTED**

## **HOW TO EFFECTIVELY SERVE SELF-REPRESENTED LITIGANTS WITH DISABILITIES**

**2010 CONFERENCE**  
San Francisco

**PRESENTER:**

**Linda McCulloh**  
Senior Attorney  
Administrative Office of the Courts  
Education Division

## **LINDA P. MCCULLOH**

Linda McCulloh is a Senior Attorney in the Education Division/CJER of the Administrative Office of the Courts (AOC). She is also the ADA Resources Coordinator for the California judicial branch. She has been teaching programs on the Americans With Disabilities Act and requests for accommodations. Ms. McCulloh staffs the Access for Persons With Disabilities Subcommittee of the Judicial Council's Access and Fairness Advisory Committee and several working groups on access to the courts. She is a member of the State Bar Council on Access and Fairness and was Chair of the Education Subcommittee of the State Bar Committee of Legal Professionals with Disabilities. On a national level, she was on the Education Committee of the U.S. Access Board's Courthouse Access Advisory Committee.

She has conducted training and presentations to the California courts, Administrative Office of the Courts, the State Bar of California, the Society of Government Meeting Professionals, the National Association of Judicial Educators, the Practising Law Institute and many other organizations. Also, Ms. McCulloh was the key speaker on accessibility issues at many bar associations programs, including the Los Angeles County Bar, Alameda County Bar and the Beverly Hills Bar Associations.

She has authored and co-wrote several publications including the State Bar of California's brochures on "I Have A Disability. What Are My Employment Rights Under the California Fair Employment & Housing Act" and "Disability Awareness: How To Accommodate Persons With Disabilities."

If you have any questions regarding accessibility at the courts, you may contact Linda McCulloh at [linda.mcculloh@jud.ca.gov](mailto:linda.mcculloh@jud.ca.gov) or at 415-865-7746.

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# THE LAW

## **AMERICANS WITH DISABILITIES ACT**

### Title II: State and Local Government Activities

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g; public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Note: This summary is from the U.S. Department of Justice publication "A Guide to Disability Rights Laws" at <http://www.ada.gov/cguide.htm>.

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### **Tennessee v. Lane**

541 US 509 (2004)

The U.S. Supreme Court held that state courts had to make reasonable accommodations to allow persons with disabilities to exercise their fundamental rights. Because Title II was a "reasonable prophylactic measure, reasonably targeted to a legitimate end," and because Congress had the authority under the 14th Amendment to regulate the actions of the states to accomplish that end, the Americans With Disabilities Act was constitutional.

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### **Summary of California Access Laws**

Under California law, persons with disabilities are entitled to full and equal access to places of accommodation, transportation carriers, lodging places, recreation and amusement facilities, and other business establishments where the general public is invited. This rule applies to medical facilities, including hospitals, clinics and physicians' offices. Persons with both physical and mental disabilities are protected. (Civ. Code, § 54.1.)

A person with a disability or a trainer of guide, signal or service dogs has the right to be accompanied by a guide dog, signal dog, or service dog without being required to pay an extra charge or to leave a security deposit, although if with a trainer, the dog must be on a

leash and tagged as a guide, signal or service dog. (Civ. Code, § 54.1, subd. (b)(6)(A), and § 54.2; Food & Agr. Code, §§ 30850 and 30852.) However, such persons can be liable for any provable damage done to the premises or facility by the dog. (Civ. Code, § 54.1, subd. (c), and § 54.2, subds. (a) and (b).)

Under this nondiscrimination law, an establishment is not required to make structural modifications in order to facilitate access by persons with physical disabilities. (*Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App3d 881.) However, other laws which mandate structural modification may apply to these establishments.

Civil Code section 54.7 authorizes zoos and wild animal parks to prohibit guide, signal or service dogs from accompanying persons with disabilities in areas where patrons of the park are not separated from zoo or park animals by physical barriers. However, any mode of transportation provided to the general public must be offered free to persons with visual-impairments who would otherwise use a guide dog or persons in wheelchairs who would otherwise use a service dog.

It is a misdemeanor to interfere with the right of a person with a disability to be accompanied by a guide dog, signal dog or service dog in public conveyances or accommodations. (Pen. Code, § 365.5.) It is a misdemeanor to intentionally interfere with the use of a guide dog by harassment or obstruction. (Pen. Code, § 365.6.) It is also a misdemeanor to knowingly or fraudulently represent yourself to be the owner or trainer of a guide, signal or service dog. (Pen. Code, § 365.7.) It is an infraction for any person to permit a dog owned, harbored or controlled by him or her to cause injury or death to any guide, signal or service dog performing its duties. (Pen. Code, § 600.2.)

Note: This summary is from the California Department of Justice publication, "Legal Rights of Persons With Disabilities" at <http://ag.ca.gov/civilrights/reports.php#disability>.

## **SB 1608 (CALIFORNIA CIVIL CODE SECTION 55.54)**

This statute requires that early evaluation conferences be conducted by a superior court judge or commissioner or a court early evaluation conference officer for cases relating to a building access issue. The legislation provides no specific training requirements for judges. But for a commissioner to be qualified to conduct the conference, he or she must have received training regarding disability access requirements imposed by the Americans With Disabilities Act of 1990, state laws that govern access to public facilities, and federal and state regulations adopted under those laws. A "court early evaluation conference officer" is an attorney employed by the court who has received training regarding disability access requirements imposed by the Americans With Disabilities Act of 1990, state laws that govern access to public facilities, and federal and state regulations adopted under those laws. Attorneys serving in this capacity may also be used by the court for other purposes not related to these proceedings. (Civ. Code, § 55.54(i).)

## **CALIFORNIA CIVIL CODE SECTION 54.8**

54.8. (a) In any civil or criminal proceeding, including, but not limited to, traffic, small claims court, family court proceedings and services, and juvenile court proceedings, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or in any administrative hearing of a public agency, where a party, witness, attorney, judicial employee, judge, juror, or other participant who is hearing impaired, the individual who is hearing impaired, upon his or her request, shall be provided with a functioning assistive listening system or a computer-aided transcription system. Any individual requiring this equipment shall give advance notice of his or her need to the appropriate court or agency at the time the hearing is set or not later than five days before the hearing.

(b) Assistive listening systems include, but are not limited to, special devices which transmit amplified speech by means of audio-induction loops, radio frequency systems (AM or FM), or infrared transmission. Personal receivers, headphones, and neck loops shall be available upon request by individuals who are hearing impaired.

(c) If a computer-aided transcription system is requested, sufficient display terminals shall be provided to allow the individual who is hearing impaired to read the real-time transcript of the proceeding without difficulty.

(d) A sign shall be posted in a prominent place indicating the availability of, and how to request, an assistive listening system and a computer-aided transcription system. Notice of the availability of the systems shall be posted with notice of trials.

(e) Each superior court shall have at least one portable assistive listening system for use in any court facility within the county. When not in use, the system shall be stored in a location determined by the court.

(f) The Judicial Council shall develop and approve official forms for notice of the availability of assistive listening systems and computer-aided transcription systems for individuals who are hearing impaired. The Judicial Council shall also develop and maintain a system to record utilization by the courts of these assistive listening systems and computer-aided transcription systems.

(g) If the individual who is hearing impaired is a juror, the jury deliberation room shall be equipped with an assistive listening system or a computer-aided transcription system upon the request of the juror.

(h) A court reporter may be present in the jury deliberating room during a jury deliberation if the services of a court reporter for the purpose of operating a computer-aided transcription system are required for a juror who is hearing impaired.

(i) In any of the proceedings referred to in subdivision (a), or in any administrative hearing of a public agency, in which the individual who is hearing impaired is a party, witness, attorney, judicial employee, judge, juror, or other participant, and has requested use of an assistive listening system or computer-aided transcription system, the proceedings shall not commence until the system is in place and functioning.

(j) As used in this section, "individual who is hearing impaired" means an individual with a hearing loss, who, with sufficient amplification or a computer-aided transcription system, is able to fully participate in the proceeding.

(k) In no case shall this section be construed to prescribe a lesser standard of accessibility or usability than that provided by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant to that act. Leg.H. 1980 ch. 1002, 1992 ch. 913, 1993 ch. 1214, 2001 ch. 824.

## **CALIFORNIA RULES OF COURT RULE 1.100**

The Judicial Council of California, the policymaking body for the courts, adopted rule 1.100 to implement the federal Americans with Disabilities Act (ADA) and related state law in the courts.

Rule 1.100 seeks to provide a workable and orderly framework for compliance with the ADA and state laws. The rule provides the mechanism for anyone with disabilities participating in court activities, programs, or services—lawyers, parties, witnesses, jurors, and any other participants—to request accommodations by making a written or oral request to a court's ADA or access coordinator.

### **RULE 1.100 CASES**

There are two cases discussing rule 1.100. They are *In Re the Marriage of James C.*, 158 Cal.App.4th 1261 (2008) and *Biscaro v. Stern*, 10 C.D.O.S. 1319 (filed 1/28/10).

**In re the Marriage of JAMES and CHRISTINE C. JAMES C.,  
Respondent, v. CHRISTINE C., Appellant.  
G037159**

**COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE  
DISTRICT, DIVISION THREE  
158 Cal. App. 4th 1261; 70 Cal. Rptr. 3d 715; 2008 Cal. App. LEXIS  
53; 20 Am. Disabilities Cas. (BNA) 665**

**January 15, 2008, Filed**

**SUBSEQUENT HISTORY:** Rehearing denied by *James M.C. v. Christine J.C.*, 2008 Cal. App. LEXIS 273 (Cal. App. 4th Dist., Feb. 14, 2008)  
Review denied by *Marriage of C. (James M.) & (Christine J.)*, 2008 Cal. LEXIS 4587 (Cal., Apr. 16, 2008)

**PRIOR-HISTORY:**

Superior Court of Orange County, No. 04D004230, Nancy Wieben Stock and Claudia Silbar, Judges.

**COUNSEL:** Trope and Trope, Thomas Paine Dunlap, Brian P. Lepak; Snell & Wilmer and Richard A. Derevan for Appellant.

Honey Kessler Amado for Respondent.

**JUDGES:** Opinion by Fybel, J., with Sills, P. J., and Rylaarsdam, J., concurring.

**OPINION BY:** Fybel

**OPINION**

**FYBEL, J.--**

I.

Introduction

Christine C.<sup>1</sup> appeals from the judgment entered on James C.'s petition for dissolution of marriage. Christine suffers from bipolar disorder and breast cancer. She was representing herself in propria persona and was hospitalized when the trial court denied her request under the Americans with Disabilities Act of 1990, 42 *United States Code section 12101 et seq.* (ADA) and *California Rules of Court, rule 1.100* to continue the trial. The trial was concluded in her absence. Christine contends the trial court erred by denying her ADA request.

1 We use the parties' first names to avoid confusion, not out of disrespect. As agreed by counsel at oral argument, we use throughout this opinion only the first letter of the parties' last name to preserve confidentiality required under California Rules of Court, rule 1.100(c)(4).

Although we sympathize with the trial court's frustration over the many continuances granted in this case, including a prior unopposed ADA request from Christine, we conclude her request for ADA accommodation under *California Rules of Court, rule 1.100* should have been granted. It is undisputed Christine suffers from bipolar disorder, a potentially incapacitating mental illness, and, on her psychiatrist's recommendation, checked herself into a hospital the day before trial was set to resume. Rule 1.100(f) permits a trial court to deny a request for accommodation under the ADA only if the court makes a determination of at least one of three specifically identified grounds.<sup>2</sup> None of



those grounds existed when Christine's request was denied. We therefore reverse and remand without addressing Christine's challenge to the judgment on its merits.

2 The three permissible grounds for denying an ADA accommodation request are (1) the applicant failed to satisfy the requirements of *California Rules of Court, rule 1.100*; (2) the requested accommodation "would create an undue financial or administrative burden on the court"; and (3) the requested accommodation "would fundamentally alter the nature of the service, program, or activity." (Cal. Rules of Court, rule 1.100(f).)

## II.

### Facts

#### A. Background

Christine and James were married on February 10, 1989. They separated on May 6, 2004, and James filed a petition for dissolution of marriage on May 13, 2004. The case was assigned to Judge Silbar.

Christine and James have one child from their marriage. Christine also has an adult son from a prior marriage.

James is a physician. In 1996, he formed a business that performs medical review for health care payers, such as health insurance companies. James and Christine's 2002 federal income tax return reflected gross income of \$ 707,042 and adjusted gross income of \$ 644,918.

In an order to show cause filed May 17, 2004, Christine disclosed she suffered from bipolar disorder and breast cancer. Six weeks earlier, she had undergone a hysterectomy after the discovery of cancerous tumors.

An order filed June 2, 2004, approved a stipulation resolving issues of temporary child custody and visitation, and temporary child and spousal support. The order granted Christine monthly spousal support of \$ 5,500. On November 19, 2004, the court granted the parties a judgment of dissolution as to status only, reserving jurisdiction over all other issues. The issues to be resolved at trial included permanent child and spousal support, valuation of James's business, valuation of the family residence, and Christine's contention James had concealed over \$ 1 million during their marriage.

On March 9, 2005, the court scheduled the trial for August 2, 3, and 4, 2005. On June 22, 2005, the court appointed counsel to represent James and Christine's child.

#### B. Christine's First ADA Request

On July 27, 2005, Christine applied ex parte for an order continuing the trial due to her psychiatric condition. Christine's treating psychiatrist, Kathleen Farinacci, M.D., submitted a declaration confirming that Christine had suffered from bipolar disorder for "a number of years." Dr. Farinacci further declared: "The divorce proceedings and upcoming trial have been a source of serious anxiety and emotional turmoil for Christine C[.] and I am afraid that she may suffer a mental and emotional breakdown as a result of the pressures of trial. As a result, I do not believe that she is capable to prepare for trial at this time. [¶] ... I believe that if the trial were delayed for 90 days that Christine C[.] would be in better psychological and emotional shape to deal with the trial and would be less at risk of a breakdown."

The court denied Christine's ex parte application but stated, "[i]f you advise the court in the middle of the trial there is an emergency, I'll certainly respond to it." The court then commented, "I don't think I have any evidence to indicate that she would be institutionalized for 10 years if we started trial." The court decided to try valuation and property issues before custody and support issues.

On July 29, 2005, Christine filed an exhibit list and a witness list, which included a business appraiser and a forensic accountant. On the same date, the parties filed their respective trial briefs.

In her trial brief, Christine again explained she suffered from bipolar disorder and two forms of cancer.

Trial started on August 2, 2005. Christine was present in a wheelchair, and her attorney stated she was ill. On the first day of trial, James testified and presented expert testimony and evidence concerning the valuation of his business. On the second day of trial (Aug. 3), James presented expert testimony and evidence on the value of the family residence. Christine was not present on August 3.

At 11:11 a.m. on August 3, the court recessed and conducted an in-chambers conference with counsel. In the meantime, Christine filed a request for accommodations by persons with disabilities (the ADA Request). She filed the request with Assistant Presiding Judge Wieben Stock, the ADA coordinator, who notified Judge Silbar of the request. Judge Silbar conducted a telephonic examination of Dr. Farinacci, asking her if Christine would be "fine" for trial in 90 days. Dr. Farinacci was placed under oath and testified: "[F]ine would be an exaggeration, but right now she has been a wreck. I mean ... very depressed and crying all the time and really overwhelmed by everything that is happening to the point that ... we were discussing hospitalization for her. [¶] And following my last visit with her I called the hospital where she'd been before to see if that could be arranged." Dr. Farinacci testified Christine's mental disorders were "lifelong conditions" but "a little bit of time passing where she comes to grips with the various things that she has found out will allow her to be able to deal with the whole situation and go to trial." Dr. Farinacci confirmed that Christine suffered from bipolar disorder, "and what that means is her mood is unstable and sometimes she is much more manic and sometimes she's depressed."

After a brief recess, the court announced that after a thorough discussion, the court and counsel agreed it would not be in either party's best interest to proceed with trial while the ADA Request was pending. In light of Dr. Farinacci's testimony, the court continued the trial to November 29, 2005, and set a settlement conference for September 20. The court minutes for August 3 included this statement: "For the record, [the] court feels this matter should have proceeded to trial. Historically, the court was not made aware of [Christine]'s mental illness. This court had not seen [Christine] in a wheelchair until yesterday. The trial continuance is to benefit both sides."

After being informed by Judge Silbar of the trial continuance, Assistant Presiding Judge Wieben Stock granted the ADA Request, stating: "Given the nature of this accommodation, that it is a temporary accommodation relating to the timing and pace of the trial as it was set to occur this week, [Christine] is advised that, consistent with her rights to confidentiality in this matter, she should be prepared to make available to the trial [c]ourt, any updated medical or psychiatric status information, including, if appropriate, the ability to consult with any treating professionals, so that the Court can monitor and make appropriate adjustments, if necessary, relative to future trial/hearing settings."

### *C. Further Trial Continuance and Motion to Appoint Guardian ad Litem*

In early September 2005, Christine underwent surgery to remove a cancerous tumor from her left armpit. Her surgeon described the tumor as a "serious malignancy" and "showed that her non-Hodgkin's lymphoma had spread to parts of her body beyond that at the time of her original diagnosis."

Later in September, Christine filed an order to show cause asking the court to order James to pay her \$ 72,000 he owed on a promissory note and to liquidate some community property securities so she could receive an advance of community funds. In support of the order to show cause, Christine declared she was "badly in need of additional funds because my financial condition has seriously deteriorated." The trial court denied the order to show cause.

On November 10, 2005, Christine requested a continuance of the trial, scheduled for November 29. Christine's oncologist submitted a declaration concluding Christine was not fit for trial on that date. The oncologist explained: "[Christine] has a very complicated medical history of breast cancer and

non-Hodgkin's lymphoma. She has recently been diagnosed with recurrent non-Hodgkin's lymphoma. She has been quite stressed with those recent findings. She is also quite fatigued which is part of the disease state. [¶] ... At this point a great deal of work needs to be done to determine the extent of the recurrent lymphoma. Imaging studies and a bone marrow exam have been done. I have been contacting other experts in the field of bone marrow transplantation to determine the extent of aggressive therapy needed." Dr. Farinacci submitted a declaration concluding Christine was not fit for trial on November 29 because "[t]he stress of this recurring cancer has worsened [her] psychological condition."

James did not object to the request, and the trial court continued the trial to March 1 and 2, 2006.

In December 2005, James moved for an order appointing a guardian ad litem for Christine. His attorney's declaration asserted a guardian ad litem was necessary "because it has become apparent this dissolution action is unlikely to be completed in a timely manner as a result of [Christine]'s ongoing disability." Christine was unable to pay her attorney, the attorney withdrew, and Christine opposed the motion in propria persona. Dr. Farinacci submitted a declaration reaffirming Christine suffered from bipolar disorder, but was "currently on a pharmaceutical regimen under my medical supervision that has controlled the mood swings and compulsivity that are characteristic of this genetic disorder." According to Dr. Farinacci, Christine was "well stabilized" emotionally, fully competent mentally, capable of providing for her personal needs, and able to manage her financial resources. Dr. Farinacci suggested Christine undergo an *Evidence Code section 730* evaluation to "answer any issues of mental capacity or stability."

On January 31, 2006, the trial court denied James's motion to appoint a guardian ad litem, stating, "I do not think that I can make the findings by clear and convincing evidence that I am required to make in order to appoint a guardian ad litem or a conservator." The court mentioned Christine's prior requests for a continuance, noted the trial had been set for March 2006 "for many months," and then told Christine, "so I expect you are not going to come in March, asking for a continuance; is that correct?" Christine (who did not have counsel) replied, "[n]o, I won't go ask you for a continuance."

#### *D. Christine's Second ADA Request*

On February 27, 2006, Christine filed an ex parte request for an ADA accommodation to continue the trial (the Second ADA Request). The Second ADA Request was personally served on Presiding Judge Wieben Stock, the court's ADA coordinator, and on Judge Silbar. Accompanying the Second ADA Request was a declaration from Dr. Farinacci stating: "[Christine] is currently in a totally depleted state emotionally and I am strongly recommending that she be hospitalized early the week of February 27, 2006 at a local psychiatric facility and hospital. While she is hospitalized, my professional medical opinion is that she be granted absolute rest from any further legal stress. The duration of her hospitalization will be determined by staff psychiatrists and physicians. I estimate that with proper care, she will be able to resume normal activities within three months."

Christine was not present when trial resumed on March 1, 2006. On February 28, 2006, she had checked herself into a hospital on Dr. Farinacci's recommendation. Christine was admitted by Dr. Eric Speare and was under his care through March 4, 2006, when--against Dr. Speare's advice--she checked herself out of the hospital. She did so because the behavioral health unit mixed alcohol and drug patients with psychiatric patients, making the atmosphere seem "turbulent and oppressive."

Christine's friend, Daniel Remy (who is not a lawyer), was in Judge Silbar's courtroom on March 1. He told Judge Silbar that Christine had been hospitalized and that an ADA request was pending before Presiding Judge Wieben Stock. Judge Silbar said she would contact Presiding Judge Wieben Stock to learn if a request was pending. Judge Silbar returned after a recess and announced, "[t]he court does not have any paperwork from any other court, whether it be the Court of Appeal, whether it be the presiding judge, that would indicate the court shouldn't proceed on this trial date, which appears to be our third or fourth trial date."

Remy then went to see Presiding Judge Wieben Stock and met with her for an hour. In a declaration submitted with Christine's motion for a new trial, Remy stated that Presiding Judge Wieben Stock told him she needed written proof that Christine had been hospitalized and would stop the trial if he could present " 'anything' " to show Christine was in the hospital. Presiding Judge Wieben Stock gave Remy her personal fax number so he could directly send her evidence of Christine's hospitalization. Remy contacted Dr. Speare, who stated he would send a note on his prescription pad to Presiding Judge Wieben Stock. Later that day, Dr. Speare told Remy that by 2:00 p.m. he had faxed a note to Presiding Judge Wieben Stock confirming Christine had been hospitalized. Remy, believing the trial would be continued, went home.

Presiding Judge Wieben Stock denied the request to continue the trial, stating: "On March 1, 2006 this Court met with Mr. Daniel P. Remy, personal representative for moving party Christine C[.] This Court instructed Mr. Remy to provide any available evidence of Ms. C[.]'s current status to the trial judge in this matter as soon as possible. A determination whether to grant a continuance in the middle of an ongoing and complex trial involves the necessary weighing and balancing of a variety of factors, not otherwise known to this Court. [¶] For example, a review of the court record in this case, reveals that the declarant on the current ADA request, Dr. Kathleen Farinacci, M.D. submitted a prior declaration on or about January 23, 2006 declaring that Ms. C[.] 'is now well stabilized emotionally ... [.]' Dr. Farinacci further declared that Ms. C[.] is 'not severely physically incapacitated by any illness at this time.' [¶] As of the day of the scheduled trial resumption, Ms. C[.] had not provided the trial judge with any evidence of her then-existing condition. It is this Court's understanding that Ms. C[.] has been hospitalized and at this Court's request, a later-faxed note from Dr. Eric Speare, M.D. states only that Ms. C[.] has been hospitalized and was admitted the night before March 1, 2006. [¶] Under the unique circumstances of this case, the Court finds that to grant Ms. C[.] a second mid-trial continuance, ex parte and without sufficient medical evidence, would fundamentally alter the nature of the service program or activity, within the meaning of the ADA, insofar as it would ... inappropriately countermand the discretion and duties of the trial judge in the matter, who is otherwise fully qualified to consider Ms. C[.]'s reasonable requests, in an appropriate manner."

Judge Silbar learned Christine had made the Second ADA Request to Presiding Judge Wieben Stock, but proceeded with trial before a ruling was made on that request. Judge Silbar stated Christine "has failed to do anything that would mandate or even require this court to consider another continuance" and added the court had shown "patience by entertaining the C[.] matter 29 times." Although Presiding Judge Wieben Stock and Judge Silbar conversed about the Second ADA Request, it appears Judge Silbar was never informed of Dr. Speare's note confirming Christine had been hospitalized. Judge Silbar stated: "[E]ven though Ms. C[.] is not present, the court intends to be as fair as possible to her in all of these issues. We are not here to railroad her because she is not here."

Judge Silbar approved with a few additions the stipulation regarding temporary child custody and visitation as the permanent custody and visitation order, ordered James to pay monthly spousal support of \$ 4,000 based on his offer to pay that amount, and ordered Christine to pay James \$ 25,000 in attorney fees, to be deducted from her share of a brokerage account. Judge Silbar assigned a community property value of \$ 557,000 to James's business. (In contrast, Christine's business valuator would have testified the business was worth \$ 1.4 million.) James was awarded an equity interest credit of \$ 182,077 in the family residence, which Christine contended was overvalued by \$ 100,000.

#### *E. Christine's Motion for a New Trial*

The judgment of dissolution with an addendum on reserved issues was entered on March 10, 2006. Christine obtained counsel, and they brought a motion to vacate the judgment and for a new trial. The motion included declarations from Christine, Remy, Dr. Farinacci, and Dr. Speare confirming Christine was hospitalized on March 1. Dr. Speare declared, among other things, he believed Christine "would not have been able to participate in trial given her medical condition on March 1,

200[6]" and described her as "physically incapacitated and unable to function, as she was rambling, distressed and hyperv verbal."

In ruling on Christine's motion for a new trial, Judge Silbar recounted--over nine pages of the reporter's transcript--the procedural history of the case, emphasizing the many continuances. The parties had stipulated to some of the continuances, and the origin of one was unknown. Although recognizing that "most ADA accommodation requests are confidential," Judge Silbar found that Christine "waived that confidentiality by bringing the issue up on numerous occasions." Indeed, Judge Silbar criticized Christine for going to Presiding Judge Wieben Stock with a request for an ADA accommodation "without the court's knowledge," even though Presiding Judge Wieben Stock was the ADA coordinator. Judge Silbar referred to Remy as a man "whose name has been thrown around in this matter numerous times," and commented that he had spoken up "on numerous occasions" and had sought "another accommodation" from Presiding Judge Wieben Stock. Judge Silbar accused Dr. Farinacci ("[t]he psychologist or psychiatrist or whatever her title is") of "submitting under oath competing statements to two different courts regarding the mental state of [Christine]" and found her testimony to "completely lack credibility. Completely."

Judge Silbar denied the motion with these strong words: "This is absurd, absolutely absurd. Two-and-a-half years, 30 to 35 appearances on a very simple dissolution is unacceptable, costly, and inexcusable. [¶] The court finds that the tactics by Ms. C[.] were manipulations to obtain continuances. The court made that finding when I proceeded on March 1st, 2006. [¶] After numerous attempts for continuances that were denied, after numerous requests for continuances that were granted, I get an informal statement that she checked herself into a hospital the night before trial resumes. [¶] Unacceptable. There is no surprise to Ms. C[.] [¶] The court finds by a preponderance of the evidence there is no irregularity in the proceedings resulting in an unjust, unfair result to Ms. C[.] Ms. C[.] has attempted to, by using two courtrooms, to manipulate the system." Judge Silbar also stated: "Let the Court of Appeal look at the record and let the Court of Appeal understand that we cannot--if we allowed every case to continue for two-and-a-half years, we wouldn't get anything done."

III.

The Trial Court Erred by Denying the Second ADA Request Under California Rules of Court, Rule 1.100 for a Trial Continuance

Did the trial court err by denying the Second ADA Request for accommodation? In her reply brief, Christine argues *California Rules of Court, rule 1.100* virtually compelled Presiding Judge Wieben Stock to grant a trial continuance as an ADA accommodation. In response to our invitation, James submitted a supplemental brief in response to issues raised for the first time in the reply brief arguing, among other things, the trial court did not abuse its discretion by denying the Second ADA Request.<sup>3</sup>

3 James moved to strike portions of Christine's reply brief on the ground it raised issues not raised in her opening brief. Because we invited James to file a supplemental brief to address those issues, we deny his motion to strike.

#### A. *California Rules of Court, Rule 1.100*

*California Rules of Court, rule 1.100* governs requests for accommodations by persons with disabilities. Rule 1.100(a) defines "persons with disabilities" to mean persons covered by *Civil Code section 51 et seq.* (the Unruh Civil Rights Act), the ADA, or other applicable state or federal law.

*California Rules of Court, rule 1.100* advances the court policy "to ensure that persons with disabilities have equal and full access to the judicial system." (Cal. Rules of Court, rule 1.100(b).) To fulfill that purpose, rule 1.100(b) requires each superior court and appellate court to designate at least

one person to be the ADA coordinator to address requests for accommodations. Rule 1.100(c) permits requests for accommodations to be made ex parte to the ADA coordinator, but requires they be made "as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date." The court has discretion to waive this deadline. (*Id.*, rule 1.100(c)(1), (3).) The court must keep confidential all of the applicant's information concerning the request unless the applicant waives confidentiality in writing or disclosure is required by law. (*Id.*, rule 1.100(c)(4).)

California Rules of Court, rule 1.100(a)(3) defines "accommodations" to mean "actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities" and may include "making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites." In responding to a request for accommodation under *rule 1.100*, the court "must consider, but is not limited by, *California Civil Code section 51 et seq.*, the provisions of the Americans With Disabilities Act of 1990, and other applicable state and federal laws in determining whether to provide an accommodation or an appropriate alternative accommodation." (Cal. Rules of Court, rule 1.100(e)(1).)

The grounds for denying a request for accommodation are limited: "A request for accommodation may be denied only when the court determines that: [¶] (1) The applicant has failed to satisfy the requirements of this rule; [¶] (2) The requested accommodation would create an undue financial or administrative burden on the court; or [¶] (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity." (Cal. Rules of Court, rule 1.100(f).)

#### *B. Christine Came Within the ADA and Followed the Procedures Under California Rules of Court, Rule 1.100 for Requesting an Accommodation*

It was undisputed Christine suffered from bipolar disorder, a potentially incapacitating mental illness which may result in disability under the ADA.<sup>4</sup> (*Den Hartog v. Wasatch Academy* (10th Cir. 1997) 129 F.3d 1076, 1081 [bipolar disorder of sufficient severity is a disability under the ADA].) In his supplemental brief, James assumes Christine qualifies as having a mental impairment that substantially limits one or more of her major life activities and is, therefore, disabled under the ADA. (See 42 U.S.C. § 12102(2)(A).) In addition, Christine suffered from breast cancer and a non-Hodgkin's lymphoma.

4 California Rules of Court, rule 1.100(a)(3) does not expressly include a trial continuance as an accommodation. Rule 1.100(a)(3) is not an exhaustive list, and James does not assert an accommodation cannot include a trial continuance. We conclude an accommodation under rule 1.100(a)(3) includes, under the appropriate circumstances, a trial continuance.

Christine followed the procedures for seeking an ADA accommodation. On February 27, 2006, Christine had the Second ADA Request personally served on Presiding Judge Wieben Stock and on Judge Silbar. Christine was hospitalized on February 28, 2006, and the next day her friend, Remy, made another request for an ADA accommodation in the form of a trial continuance. The Second ADA Request was filed fewer than five court days before the date set for trial to resume, but the trial court apparently waived the deadline under California Rules of Court, rule 1.100(c)(3), and James does not argue the Second ADA Request was untimely.

In considering the Second ADA Request, Presiding Judge Wieben Stock was required to consider the provisions of the ADA. Relevant here is title II of the ADA (42 U.S.C. §§ 12131-12165) concerning provision of public services. Title 42 *United States Code section 12132* states, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Under *section 12131(1)*, a state and its departments and agencies are defined as public entities. Christine, acting on her psychiatrist's recommendation, checked herself into a hospital

on February 28, 2006, as a result of her mental illness. In the order denying the Second ADA Request, Presiding Judge Wieben Stock acknowledged receiving a faxed note from Dr. Speare stating Christine had been hospitalized.

As Christine was representing herself in propria persona, she was unrepresented at trial on March 1. Thus, by reason of her disability, Christine would be denied the benefit of court services unless the trial court granted the Second ADA Request.

*C. None of the Three Grounds Listed in California Rules of Court, Rule 1.100(f) Required to Deny an ADA Request Was Present*

The trial court could deny the Second ADA Request only by making a determination of one of the three grounds listed in California Rules of Court, rule 1.100(f). If the court did not, or could not, make any such determination, the court *had no choice* but to grant Christine's request for an accommodation.

Under California Rules of Court, rule 1.100(f)(1), a trial court may deny an ADA accommodation request when the court determines "[t]he applicant has failed to satisfy the requirements of this rule ... ." In denying the Second ADA Request, Presiding Judge Wieben Stock stated, "Ms. C[.] had not provided the trial judge with any evidence of her then-existing condition." But in the Second ADA Request, filed on February 27, 2006, Christine described her total physical depletion and mental fatigue requiring an in-hospital stay and daily medicinal and psychiatric treatment. Dr. Farinacci submitted a supporting declaration stating she "strongly recommend[ed]" that Christine be hospitalized. In several previous filings, Christine had explained in detail she suffered from bipolar disorder and breast cancer. By midafternoon on March 1, 2006, Presiding Judge Wieben Stock had received a note from Dr. Speare confirming Christine had been hospitalized. James does not contend Christine failed to present sufficient evidence she had been hospitalized.

Under California Rules of Court, rule 1.100(f)(2), a trial court may deny an accommodation request when the court determines "[t]he requested accommodation would create an undue financial or administrative burden on the court ... ." Christine's requested accommodation of a trial continuance would not have created an *undue* financial or administrative burden on the court. While we share Judge Silbar's concern over the cost to the public of multiple trial continuances, such costs must be accepted under certain circumstances as necessary for effective access to judicial services for disabled persons.

Under California Rules of Court, rule 1.100(f)(3), the court may deny an accommodation request when the court determines "[t]he requested accommodation would fundamentally alter the nature of the service, program, or activity." Presiding Judge Wieben Stock determined a trial continuance would fundamentally alter the nature of the service provided "insofar as it would ... inappropriately countermand the discretion and duties of the trial judge in the matter, who is otherwise fully qualified to consider Ms. C[.]'s reasonable requests, in an appropriate manner." That determination was in error. Rule 1.100(b) requires each superior court to appoint an ADA coordinator to "address requests for accommodations" under the ADA. The duty to address requests for accommodations necessarily includes the power to grant or to deny them.

As James states, "Judge Wieben-Stock was the ADA coordinator for the Orange County Superior Court" and "Christine's ADA requests were correctly directed to her." Granting the Second ADA Request would not have interfered with Judge Silbar's power to control the courtroom because Presiding Judge Wieben Stock, as the superior court ADA coordinator, had the power under California Rules of Court, rule 1.100(b) to decide the Second ADA Request.

James argues the Second ADA Request "fundamentally alters the court's control of the judicial process because [Christine] is attempting to place herself outside the scope of the trial court's control of its judicial process." Christine placed herself squarely within the scope of the court's judicial process by requesting an ADA accommodation under *California Rules of Court, rule 1.100*. Christine followed the procedures for making a request for an ADA accommodation. The trial court's control of



the judicial process was circumscribed by *rule 1.100*, which limited the grounds on which the trial court could deny an ADA request.

James argues the trial court's denial of the Second ADA Request must be reviewed under the abuse of discretion standard applicable to motions to continue a trial. He similarly argues the ADA did not excuse Christine from complying with the rules of civil procedure, including rules governing requests for trial continuances. Those arguments mischaracterize the nature of Christine's request. Although the accommodation Christine requested was a trial continuance, her request was for an *ADA accommodation*. Requests for ADA accommodations are governed by *California Rules of Court, rule 1.100*. Christine followed the rules of civil procedure in seeking an ADA continuance by complying with *rule 1.100*. She was not required to bring a motion to continue the trial to seek a continuance as an ADA accommodation. Rule 1.100(f) states an ADA accommodation request may be denied *only when* the court makes at least one of three determinations identified in the rule. The rule does not make an exception for an accommodation in the form of a trial continuance.

James argues *California Rules of Court, rule 1.100* permitted Presiding Judge Wieben Stock, as the ADA coordinator, to defer to Judge Silbar in ruling on Christine's ADA accommodation requests. We disagree with this reading of *rule 1.100*. Even if that interpretation of *rule 1.100* were correct, we would reverse because Judge Silbar did not make any of the determinations required under rule 1.100(f) to deny an accommodation request.

Granting the Second ADA Request would not have fundamentally altered the nature of the judicial service, program, or activity affected by the request. That judicial service--the trial--would have been offered in the same form at a later date.

In awarding James attorney fees and again in denying Christine's motion for a new trial, Judge Silbar expressed concern that if every case proceeded as this one had, "we wouldn't get anything done, and it would make really a mockery of the system." Judge Silbar's frustration was understandable, but the issue was not whether a trial continuance should be granted in every case: The only issue presented was whether to grant a trial continuance as an ADA accommodation pursuant to *California Rules of Court, rule 1.100* under the circumstances of this case. Here, Christine suffered from bipolar disorder and cancer and, on advice of her psychiatrist, had been hospitalized the day before trial was set to resume. Christine had been representing herself in propria persona because she could not afford to pay her counsel and because the trial court had denied her request to liquidate and distribute some community assets. There had been prior requests for continuances, but James had not opposed them and Judge Silbar granted one on August 3, 2005, stating, "[t]he trial continuance is to benefit both sides."

In ruling on the motion for a new trial, Judge Silbar expressed the belief that Christine was manipulating the court system to avoid trial and that her psychiatrist was not credible. However, it was undisputed Christine was disabled within the meaning of the ADA, had been hospitalized on February 28, 2006, and was under a physician's care. Christine was representing herself in propria persona. Therefore, a trial continuance was a reasonable, if not necessary, accommodation, even though it meant a delay in conducting the trial. In ruling on the Second ADA Request, the only determination to be made was whether any of the grounds listed in California Rules of Court, rule 1.100(f) for denying the request was present.

The question remains of what to do to prevent this scenario from recurring, to ensure the parties' justified needs are met, and to resolve the matter justly and expeditiously. One possible solution is to make sure Christine is represented by counsel. The enormous disparity in income and resources between Christine and James is obvious from the record. A pendente lite needs-based attorney fees award to Christine under *Family Code section 2030* might be justified under the circumstances. Also, depending on Christine's condition, it might be necessary to address again the issue of appointing a guardian ad litem. These options are not an exclusive list of possible future actions.

In conclusion, none of the grounds listed in California Rules of Court, rule 1.100(f) for denying an ADA request for accommodation was present when Presiding Judge Wieben Stock denied the



Second ADA Request. Denying the Second ADA Request therefore constituted reversible error. At oral argument, the issue was raised whether the first two days of trial (Aug. 2 & 3, 2005) would stand or would be subject to retrial in the event of a reversal of the judgment. We conclude the latter: As we are reversing the judgment, any retrial must be of the entire matter, from the outset.

As the prevailing party, and in the interests of justice, Christine is awarded her costs on appeal. (*Cal. Rules of Court, rule 8.276(a)*.) In her reply brief, Christine asks us to award her attorney fees too. While it appears to us Christine may be entitled to recover her appellate attorney fees under *Family Code sections 2030 and 2032*, we must leave that decision to the trial court's discretion, upon appropriate motion in that court. (See *In re Marriage of Cheriton (2001) 92 Cal.App.4th 269 [111 Cal. Rptr. 2d 755]*; *Cal. Rules of Court, rule 3.1702(c)*.)

IV.

#### Disposition

The judgment is reversed and the matter is remanded for further proceedings. Appellant shall recover her costs incurred in this appeal.

Sills, P. J., and Rylaarsdam, J., concurred.

A petition for a rehearing was denied February 14, 2008, and respondent's petition for review by the Supreme Court was denied April 16, 2008, S161114. George, C. J., did not participate therein. Baxter, J., was of the opinion that the petition should be granted.

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DANIELA BISCARO,

Plaintiff and Respondent,

v.

MARC GREGORY STERN,

Defendant and Appellant.

B205856

(Los Angeles County  
Super. Ct. No. BD428155)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maren E. Nelson, Commissioner; Robert A. Schneider, Judge; and Michael L. Convey, Judge. Reversed and remanded.

Allen L. Lanstra, Jr., for Defendant and Appellant.

No response on behalf of Plaintiff and Respondent.

Following the trial court's failure to rule on his request for accommodation of his disabilities, Marc Stern appeals from issuance of a restraining order against him and from a default judgment awarding a condominium to his former wife as her separate property. We reverse and remand for further proceedings.

### **PROCEEDINGS**

Marc Stern and respondent Daniela Biscaro married in 1998. Their marriage produced no children. In June 2005, respondent filed a petition for dissolution. Appellant did not file a response. In May 2006, the court entered appellant's default.

On September 14, 2007, respondent filed an ex parte application for a temporary restraining order against appellant arising from a fight a month earlier between appellant and respondent's adult son. Appearing at the hearing in order to oppose a restraining order, appellant requested courtroom accommodation of his neuropsychiatric disabilities that interfered with his ability to communicate and remember. He gave the court a copy of a written request for accommodation that he had filed with court administrators in another proceeding. The court incorporated appellant's written request into the court's files. The court denied respondent's ex parte application, apparently because of the length of time respondent had waited to seek a restraining order after the fight between appellant and respondent's son. The court instead set a regularly noticed hearing for October 5 on respondent's motion. The court promised appellant it would rule on his request for accommodation of his disabilities before the next hearing and that he would receive the ruling in the mail. The record on appeal does not show any such ruling issued.

Appellant did not appear three weeks later at the October 5 hearing on the restraining order, which was before a judge different from the bench officer who had promised to rule on appellant's request for accommodation. Noting appellant's request, the judge presiding at the October 5 hearing stated:

“The file indicates a request for accommodation by [appellant] under the Americans with Disability Act. Therefore, I’ve waited until 10:05 for a matter noticed at 8:30. [Appellant] has not appeared. I will proceed based on [respondent’s] declaration.”

The court granted respondent’s motion for a restraining order. It directed appellant to stay at least 100 yards from respondent, her home and work, and her adult son.

On December 10, 2007, appellant filed a motion for reconsideration and modification of the restraining order. In support of his motion, appellant noted he had requested at the September 14 hearing accommodation of his neurological disabilities caused by multiple traumatic injuries to his brain’s frontal lobes that hindered his ability to remember, reason, and communicate. He had asked for a neuropsychologist’s assistance in the courtroom, but the court did not rule on his request. He argued the lack of assistance meant he could not meaningfully participate in the proceedings to protect his interests. Respondent opposed the motion for reconsideration, arguing it was untimely.

Appellant was not present when the motion for reconsideration was heard. The court denied appellant’s motion in a hearing lasting one half of one page of the reporter’s transcript. After respondent’s counsel introduced herself, the following was the hearing’s entirety:

“[Respondent’s Counsel]: I received a voice mail from my client approximately 9:20 that her tires have been slashed. She was unable to make it. [Court]: Okay. The motion goes off – motion for reconsideration goes off calendar. [Counsel]: Well, your Honor – [Court]: Well, wait. The motion for reconsideration is denied. [Counsel] Thank you, your Honor.”

That same month, respondent submitted a proposed judgment in the marital dissolution action. The clerk of the court rejected the judgment because it confirmed as respondent’s separate property a condominium that her petition for dissolution had not identified as her separate property. Respondent thereafter applied ex parte for expedited entry of the judgment because she was soon moving out of state and wanted to sell the

condominium before departing. At the May 2008 hearing on her application, she asserted the condominium was her separate property because appellant had given her his quitclaim deed to it; the purported quitclaim deed in the record, however, is an unintelligible copy of a recorded deed of some sort, the particulars of which cannot be made out. The court thereafter entered a default judgment against appellant which confirmed the condominium as respondent's separate property. This appeal followed.

## **DISCUSSION**

### *A. Reversible Error Not to Rule on Request for Accommodation*

According to material in the record, appellant suffers from permanent cognitive disabilities arising from multiple traumatic injuries to his brain's frontal lobes. A letter from his physician states appellant "has had permanent disability since [his injuries in 1985]. These injuries have resulted in neuropsychiatric impairment including short term memory, organization, executive functioning, and concentration." Requesting accommodation of his disability, appellant asked the court for a "facilitator" who understands "traumatic brain [injuries] – a neuropsychologist." California Rules of Court, rule 1.100, subdivision (a)(3) defines an "accommodation" as "actions that result in court services . . . or activities being readily accessible to and usable by persons with disabilities. Accommodations may include . . . furnishing, at no charge, . . . auxiliary aids and services, equipment, devices . . . readers, or certified interpreters for persons with hearing impairments; . . ." (Rule 1.100, subd.(a)(3).)<sup>1</sup>

The purpose of rule 1.100 is to allow meaningful involvement by all participants in a legal proceeding to the fullest extent practicable. Subdivision (b) declares: "It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system." (Subd. (b).) Rule 1.100 obligates a court to rule on

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<sup>1</sup> All further rule references are to the Rules of Court, and all subdivision references are to rule 1.100.

every properly presented request for accommodation that the court receives, and ordinarily the ruling must be in writing. Subdivision (e)(2) states:

“The court must inform the applicant in writing, as may be appropriate, and if applicable, in an alternative format, of the following: [¶] (A) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason therefore; or that an alternative accommodation is granted; [¶] (B) The nature of the accommodation to be provided, if any; and [¶] (C) The duration of the accommodation to be provided.” (Subd. (e)(2); See also subd. (e) [“The court must respond to a request for accommodation . . . .”])

Presumably mindful of the obligations set out in rule 1.100, the bench officer from whom appellant requested accommodation on September 14 promised to rule on his request before the hearing on respondent’s request for a restraining order. The officer stated:

“I certainly will rule on the request for accommodation. I need to have a clear understanding of – [ ] let me see what you have there. [¶] [¶] [Appellant] has filed a request for accommodation by persons with disabilities in another matter. [¶] Do you wish me to accommodate – incorporate that by reference into this case. [¶] [Appellant]: Yes. [¶] [Court]: All right. Then I’ll do that. And there will be a ruling on that before you appear in Department 2, and you’ll get that in the mail.”

Nothing in the record suggests the court ruled as promised.

The general rule is that on a silent record the “trial court is presumed to have been aware of and followed the applicable law” when exercising its discretion. (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114.) The appellate court will not presume error in this situation. (*Ibid.*) We are not inclined to follow that general rule here for two reasons: First, the Rules of Court state that the court “must respond to a request for accommodation” (subd. (e)) and “must inform the applicant in writing” (subd. (e)(2)). The court did not respond to the request and did not provide written notice. A tacit denial complies with neither of these mandates. Second, if in this setting we were to treat the failure to rule as a denial of the request, we would undermine the policy of the rule, which is to acknowledge and address disabilities of people who come before the court,

thereby ensuring “equal and full access to the judicial system.” (Subd. (b).) If the genesis of the rule is that the courts historically have failed to acknowledge and accommodate litigants with disabilities, ignoring a request for accommodation only perpetuates that failing.

These concerns notwithstanding, if the record before us led us to conclude that appellant had failed to satisfy the requirements of the rule and that his accommodation should have been denied as a matter of law, the trial court’s failure to rule might be considered harmless. We therefore consider the record in light of the Rules of Court and then address the question of prejudice.

A court may deny a properly stated request for accommodation for only one of three reasons, which we discuss below. (*In re Marriage of James M.C. and Christine J.C.* (2008) 158 Cal.App.4th 1261, 1265, 1273; subd. (f).) First, a court may deny a request if “the applicant has failed to satisfy the requirements of this rule.”<sup>2</sup> (Subd. (f)(1).) Those requirements are: (1) A written or oral request for accommodation, which appellant satisfied here. (Subd. (c)(1).) (2) The request must include a description of the accommodation and the impairment requiring accommodation; if the court finds the description inadequate, it may request additional information from the applicant. (Subd. (c)(2).) Here, appellant asked for a neuropsychologist to help with his memory and communication disabilities. The court did not indicate it needed more information to rule on appellant’s request. (3) The

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<sup>2</sup> Subdivision (c) states: “The process for requesting accommodations is as follows: [¶] (1) Requests for accommodations under this rule may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally. Requests must be forwarded to the ADA coordinator, also known as the access coordinator, or designee, within the time frame provided in (c)(3). [¶] (2) Requests for accommodations must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment. [¶] (3) Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date. The court may, in its discretion, waive this requirement.”

request must be timely, ordinarily at least five days in advance of the need for the accommodation. (Subd. (c)(3).) Here, appellant orally requested on September 14 – and in writing before then – accommodation for a hearing three weeks later on October 5. In short, there is nothing in the record before us that would suggest the trial court denied the request because appellant failed to comply with the procedural requirements of rule 1.100.

The second reason a court may deny a request is if the accommodation “would create an undue financial or administrative burden on the court.” (Subd. (f)(2).) The record contains no evidence suggesting that providing a neuropsychologist would burden the court any differently from the appointment of other facilitators, such as readers and certified interpreters for the deaf, which rule 1.100 explicitly contemplates as the type of accommodations courts ought to provide. Perhaps with a more fully developed record before the trial court prior to the court’s ruling, these burdens would have been apparent, but not so on this record.

The third, and final, reason a court may deny a request is the “accommodation would fundamentally alter the nature of the service, program, or activity.” (Subd. (f)(3).) Nothing in the record suggests a neuropsychologist assisting appellant would have necessarily altered the judicial services the court provides to the public.

Given that the record does not suggest that as a matter of law the court should have denied the request, it was incumbent on the court to consider and rule upon the adequacy of the showing that appellant made.

We now turn to whether appellant must show he was prejudiced. From as far back as 1872, a fundamental precept in California is that in civil cases only prejudicial error is reversible. (Code Civ. Proc., § 475. See Cal. Const., art VI, § 13.) Nevertheless, some errors in civil cases remain reversible per se, primarily when the error calls into question the very fairness of the trial or hearing itself. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 456, pp. 511-513.) The sole published decision to interpret rule 1.100 suggests that wrongful denial of an accommodation is structural error that does not



require prejudice for reversal. *In re Marriage of James M.C. and Christine J.C.*, *supra*, 158 Cal.App.4th 1261 was a marital dissolution. The wife was in pro per during trial of custody, support, and property issues when she admitted herself at her psychiatrist's recommendation into a hospital for treatment of bipolar disorder. (*Id.* at pp. 1264-1265, 1269.) For accommodation of her psychiatric disability, she requested a continuance of the trial, which the court denied out of frustration at the number of continuances already granted in the case. The trial continued in her absence, ending in the court's entry of judgment on the contested issues. (*Id.* at pp. 1270-1271.)

On review, the appellate court held the trial court erred in denying a continuance as an accommodation, even though the appellate court sympathized with the trial court's frustration at the multiple continuances. (*In re Marriage of James M.C. and Christine J.C.*, *supra*, 158 Cal.App.4th at pp. 1264-1265.) The appellate court noted a court may deny an accommodation for only one of three reasons (which we have discussed, *ante*), none of which applied. (*Id.* at pp. 1265, 1274.) The appellate court therefore reversed and remanded the matter to the trial court without requiring the wife to show prejudice and without addressing the merits of her substantive challenge to the trial court's judgment. (*Id.* at pp. 1265, 1277.) The appellate court's dispensing with analysis of prejudice indicates wrongful denial of an accommodation is structural error infecting a legal proceeding's reliability, which stands to reason because an accommodation's purpose is to help a party meaningfully participate in a way that enhances our confidence in a proceeding's outcome. Unlike most legal error, structural error calls for reversal per se because the error prevents a reviewing court from ascertaining what might have happened absent the error. (See *People v. Kobrin* (1995) 11 Cal.4th 416, 428-429.)

The present case, which involves not a denial of the motion but a failure to rule on it, presents an even stronger argument for structural error. Here, the trial court was under a mandatory duty imposed by the Rules of Court to rule on the motion. Not only was accommodation denied, the court never ruled on the request. We are unable to assess meaningfully what impact the grant of accommodation would have had on the

proceedings and conclude, therefore, the error was structural without a showing of prejudice. (See *Miramar Hotel Corp. v. Frank B. Hall* (1985) 163 Cal.App.3d 1126, 1127, 1130; see also *id.*, at pp. 1130-1131 (conc. opn. by Spencer, J.) [failure to issue a statement of decision when requested by a party is reversible per se].) Because the trial court did not rule on appellant's request for an accommodation, we reverse and remand with directions that the court rule on the request.<sup>3</sup>

B. *Error to Award Condominium as Respondent's Separate Property*

The court's default judgment for respondent awarded as her separate property a condominium on Redwood Avenue. Respondent's original and amended petitions for dissolution did not identify the condominium as her separate property. Her original petition identified as her separate property "All Household Goods and Furnishings located at 4346 Redwood Avenue, #A304 Marina del Rey, CA 90292" except for about two dozen specific items such as certain paintings, sculptures, and kitchen appliances. The petition did not describe the condominium itself as separate property. Respondent's amended petition was even less specific, failing to identify any marital property as separate or community property. Instead, the amended petition declared "The full nature, extent and value of separate property assets . . . is unknown at this time. [Wife] will seek leave to amend this petition upon ascertaining same."

The judgment of dissolution against appellant was by default. Appellant contends the court erred in awarding the condominium as respondent's separate property because

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<sup>3</sup> We do not suggest how the court should rule on the merits. We also observe that several different bench officers were involved in the proceedings that led to this appeal. We do not suggest by our opinion by whom the determination should be made. Subdivision (b) indicates that each court must designate an ADA coordinator. Subdivision (g) provides for the presiding judge or designated judicial officer to make certain decisions. *In re Marriage of James M.C. and Christine J.C.*, *supra*, 158 Cal.App.4th at p. 1276 stated that the assistant presiding judge/ADA coordinator was not authorized to have deferred to the individual judicial officer assigned to the case the responsibility for granting or denying the request. We express no opinion on the subject.

the court granted respondent greater relief than she had requested in her petitions for dissolution. Appellant is correct. A default judgment may not award more relief than a complaint requests without violating due process. That principle applies to marital dissolutions. (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1167 [court may not order defaulting parent to pay child support if petitioning parent did not request child support]; *Burnett v. King* (1949) 33 Cal.2d 805, 811 [error to confirm as wife's separate property marital home when her petition for dissolution did not seek adjudication of the home's ownership]; see also Code Civ. Proc., § 580, subd. (a) ["relief granted . . . if there is no answer, cannot exceed that demanded in the complaint"].) The court therefore erred in confirming the Redwood Avenue condominium as respondent's separate property.<sup>4</sup>

### DISPOSITION

The judgment is reversed. The matter is remanded with directions that the trial court rule on appellant's request for accommodation of his disabilities and for any further proceedings that may be necessary based on that ruling.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

MOHR, J.\*

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<sup>4</sup> We do not address whether respondent should be allowed to amend her petition to add her claimed separate interest in the condominium. If an amended petition is allowed, the court would be required to vacate the default and appellant would be entitled to file a timely response. (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 830; *Craft v. Craft* (1957) 49 Cal.2d 189, 193 [approving of such a procedure in marital dissolution].)

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



# 2010 California Rules of Court

## Rule 1.100. Requests for accommodations by persons with disabilities

### (a) Definitions

As used in this rule:

- (1) "Persons with disabilities" means individuals covered by California Civil Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); or other applicable state and federal laws. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment.
- (2) "Applicant" means any lawyer, party, witness, juror, or other person with an interest in attending any proceeding before any court of this state.
- (3) "Accommodations" means actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation.

*(Subd (a) amended and relettered effective January 1, 2007; adopted as subd (b) effective January 1, 1996; previously amended effective January 1, 2006.)*

### (b) Policy

It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system. To ensure access to the courts for persons with disabilities, each superior and appellate court must delegate at least one person to be the ADA coordinator, also known as the access coordinator, or designee to address requests for accommodations. This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.

*(Subd (b) adopted effective January 1, 2007.)*

### **(c) Process for requesting accommodations**

The process for requesting accommodations is as follows:

- (1) Requests for accommodations under this rule may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally. Requests must be forwarded to the ADA coordinator, also known as the access coordinator, or designee, within the time frame provided in (c)(3).
- (2) Requests for accommodations must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment.
- (3) Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date. The court may, in its discretion, waive this requirement.
- (4) The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation.

*(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2006.)*

### **(d) Permitted communication**

Communications under this rule must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before the court.

*(Subd (d) amended effective January 1, 2006.)*

### **(e) Response to accommodation request**

The court must respond to a request for accommodation as follows:

- (1) In determining whether to grant an accommodation request or provide an appropriate alternative accommodation, the court must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and other applicable state and federal laws.
- (2) The court must promptly inform the applicant of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part, the response must be in writing. On request of the applicant, the court may also provide an additional response in an alternative format. The response to the applicant must indicate:

- (A) Whether the request for accommodation is granted or denied, in whole or in part, or an alternative accommodation is granted;
- (B) If the request for accommodation is denied, in whole or in part, the reason therefor;
- (C) The nature of any accommodation to be provided;
- (D) The duration of any accommodation to be provided; and
- (E) If the response is in writing, the date the response was delivered in person or sent to the applicant.

*(Subd (e) amended effective January 1, 2010; previously amended effective January 1, 2006, and January 1, 2007.)*

**(f) Denial of accommodation request**

A request for accommodation may be denied only when the court determines that:

- (1) The applicant has failed to satisfy the requirements of this rule;
- (2) The requested accommodation would create an undue financial or administrative burden on the court; or
- (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity.

*(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2006.)*

**(g) Review procedure**

- (1) If the determination to grant or deny a request for accommodation is made by nonjudicial court personnel, an applicant or any participant in the proceeding may submit a written request for review of that determination to the presiding judge or designated judicial officer. The request for review must be submitted within 10 days of the date the response under (e)(2) was delivered in person or sent.
- (2) If the determination to grant or deny a request for accommodation is made by a presiding judge or another judicial officer, an applicant or any participant in the proceeding may file a petition for a writ of mandate under rules 8.485-8.493 or 8.930-8.936 in the appropriate reviewing court. The petition must be filed within 10 days of the date the response under (e)(2) was delivered in person or sent to the petitioner. For purposes of this rule, only those participants in the proceeding who were notified by the court of the determination to grant or deny the request for accommodation are considered real parties in interest in a writ proceeding. The petition for the writ must be served on the respondent court and any real party in interest as defined in this rule.
- (3) The confidentiality of all information of the applicant concerning the request for accommodation and review under (g)(1) or (2) must be maintained as required under (c)(4).

*(Subd (g) amended effective January 1, 2010; previously amended effective January 1, 2006.)*

**(h) Duration of accommodations**

The accommodation by the court must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified. The court may provide an accommodation for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

*(Subd (h) amended effective January 1, 2006.)*

*Rule 1.100 amended effective January 1, 2010; adopted as rule 989.3 effective January 1, 1996; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007.*

**Advisory Committee Comment**

**Subdivision (g)(2).** Which court is the "appropriate reviewing court" under this rule depends on the court in which the accommodation decision is made and the nature of the underlying case. If the accommodation decision is made by a superior court judicial officer and the underlying case is a limited civil, misdemeanor, or infraction case, the appropriate reviewing court is the appellate division of the superior court. If the accommodation decision is made by a superior court judicial officer and the case is anything other than a limited civil, misdemeanor, or infraction case, such as a family law, unlimited civil, or felony case, the appropriate reviewing court is the Court of Appeal. If the accommodation decision is made by a judicial officer of the Court of Appeal, the appropriate reviewing court is the California Supreme Court.

## MC-410

<b>APPLICANT</b> ( <i>name</i> ): APPLICANT is <input type="checkbox"/> Witness <input type="checkbox"/> Juror <input type="checkbox"/> Attorney <input type="checkbox"/> Party <input type="checkbox"/> Other <div style="text-align: right;"><i>(Specify)</i></div> Person submitting request ( <i>name</i> ):  APPLICANT'S ADDRESS:       TELEPHONE NO.:  						FOR COURT USE ONLY
<b>NAME OF COURT:</b>  STREET ADDRESS:  MAILING ADDRESS:  CITY AND ZIP CODE:  BRANCH NAME:  						
JUDGE:						
CASE TITLE:						
<b>REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND RESPONSE</b>						CASE NUMBER:

**Applicant requests accommodation under rule 1.100 of the California Rules of Court, as follows:**

1. Type of proceeding: ☐ Criminal ☐ Civil ☐ Other:
2. Proceedings to be covered (for example, bail hearing, preliminary hearing, trial, sentencing hearing, family, probate, juvenile):
3. Date or dates needed (*specify*):
4. Impairment necessitating accommodation (*specify*):
5. Type or types of accommodation requested (*specify*):
6. Special requests or anticipated problems (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

 \_\_\_\_\_  
(SIGNATURE)

## RESPONSE

The accommodation request is **GRANTED** and the court will provide the

- ☐ requested accommodation, in whole
- ☐ requested accommodation, in part (*specify below*):

For the following duration:

- ☐ For the above matter or appearance  
☐ From (dates):                      to  
☐ Indefinite period

The accommodation is **DENIED** in whole or in part because it

- ☐ fails to satisfy the requirements of rule 1.100.
- ☐ creates an undue burden on the court.
- ☐ fundamentally alters the nature of the service, program, or activity.

For the following reason (*attach additional pages, if necessary*): [See Cal. Rules of Court, rule 1.100(g), for the review procedure]

- ☐ The court will provide the alternative accommodation as follows:

Date response delivered in person or sent to applicant:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

☐ SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.

☐ SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.

Page 1 of 1



**When referring to people with disabilities, choose words that reflect dignity and respect. Use language that describes the person's disability without defining the individual as his or her disability. The following are just some examples.**

<b>INAPPROPRIATE</b>	<b>APPROPRIATE</b>
The disabled, the handicapped	People with disabilities, the disability community
Crippled, suffers from, afflicted with, stricken with, victim of, invalid	Has a disability, is a person with a disability
Normal person, healthy, whole	People without disabilities, person who is able to walk, person who can see, etc.
The blind, the deaf	Person who is blind, person who is deaf or hard of hearing
Wheelchair bound, confined or restricted to a wheelchair	Person who uses a wheelchair, wheelchair user
Handicap parking	Accessible parking, parking for people with disabilities
Dumb, mute	Person who cannot speak, has difficulty speaking, uses synthetic speech, is non-vocal, non-verbal
Stutterer, tongue-tied	Person with a speech impairment, who has a speech disability, speech disorder, or communication disability
CP victim, spastic	Person with cerebral palsy
Crippled, lame, deformed	Person with a disability, walks with a cane, uses leg braces
Epileptic	Person with epilepsy, person with seizure disorder
Fit, attack	Seizure, epileptic episode or event
Crazy, maniac, lunatic, insane, nuts, deranged, psycho, demented	People with emotional disorders, mental illness, mental health disability, psychiatric disability
Retard, mentally defective, moron, idiot, slow, imbecile, feeble-minded, Down's person, mongoloid	Person with a developmental disability, person with mental retardation, person with a developmental delay, person with Down syndrome or person who is brain injured, has traumatic brain injury, is brain damaged, with a closed head injury
Slow learner, retarded	Person who has a learning disability
Dwarf, midget	Short stature, little person
Paraplegic, quadriplegic	Person with spinal cord injury, man with paraplegia, woman who is paralyzed
Birth defect	Congenital disability, birth anomaly
A post-polio, suffered from polio	Has had polio, experienced polio
Homebound	Stay-at-home, hard for the person to get out
Senile, demented	Person with Alzheimer's disease, person with dementia



## Americans with Disabilities Act

# ADA Business BRIEF:

### Service Animals

Service animals are animals that are individually trained to perform tasks for people with disabilities – such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other special tasks. Service animals are working animals, not pets.

Under the Americans with Disabilities Act (ADA), businesses and organizations that serve the public must allow people with disabilities to bring their service animals into all areas of the facility where customers are normally allowed to go. This federal law applies to all businesses open to the public, including restaurants, hotels, taxis and shuttles, grocery and department stores, hospitals and medical offices, theaters, health clubs, parks, and zoos.



Businesses that serve the public must allow people with disabilities to enter with their service animal

- Businesses that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- A business is not required to provide care or food for a service animal or provide a special location for it to relieve itself.
- Allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals.
- Violators of the ADA can be required to pay money damages and penalties.
- Businesses may ask if an animal is a service animal or ask what tasks the animal has been trained to perform, but cannot require special ID cards for the animal or ask about the person's disability.
- People with disabilities who use service animals cannot be charged extra fees, isolated from other patrons, or treated less favorably than other patrons. However, if a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may be charged for damage caused by his or her service animal.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the animal is out of control and the animal's owner does not take effective action to control it (for example, a dog that barks repeatedly during a movie) or (2) the animal poses a direct threat to the health or safety of others.
- In these cases, the business should give the person with the disability the option to obtain goods and services without having the animal on the premises.



Service animals are individually trained to perform tasks for people with disabilities

If you have additional questions concerning the ADA and service animals, please call the Department's ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY) or visit the **ADA Business Connection** at [www.ada.gov](http://www.ada.gov)

Duplication is encouraged. April 2002

## TIP SHEETS

### **TEN TIPS FOR COMMUNICATING WITH PEOPLE WITH DISABILITIES\***

1. Speak directly rather than through a companion or the sign language interpreter who may be present.
2. Offer to shake hands when introduced. People with limited hand use or artificial limb can usually shake hands and offering the left hand is an acceptable greeting.
3. Always identify yourself and others who may be with you when meeting someone with a visual disability. When conversing in a group, remember to identify the person to whom you are speaking.

When dining with a friend with a visual disability, ask if you can describe what is on his or her plate using the clock to describe the location of the food, i.e., potato is at 3 o'clock.

4. If you offer assistance, wait until the offer is accepted. Then listen or ask for instructions.
5. Treat adults as adults. Address people with disabilities by their first names only when extending that same familiarity to all others. Never patronize people of short stature or people in wheelchairs by patting them on the head or shoulder.
6. Do not lean against or hang on someone's wheelchair or scooter. Bear in mind that people with disabilities treat their wheelchairs or scooters as extensions of their bodies.

The same goes for people with service animals. Never distract a work animal from their job without the owner's permission.

7. Listen attentively when talking with people who have difficulty speaking and wait for them to finish. If necessary, ask short questions that require short answers, or a nod of the head. Never pretend to understand; instead repeat what you have understood and allow the person to respond.
8. Place yourself at eye level when speaking with someone who is of short stature or who is in a wheelchair or on crutches.
9. Tap a person who has a hearing disability on the shoulder or wave your hand to get at his or her attention. Look directly at the person and speak clearly, slowly, and expressively to establish if the person can read your lips. If so, try to face the light source and keep hands, cigarettes and food away from your mouth when speaking.

If a person is wearing a hearing aid, don't assume that they have the ability to discriminate your speaking voice. Do not raise your voice. Speak slowly and clearly in a normal tone of voice.

10. Relax. Don't be embarrassed if you happen to use common expressions such as "See you later" or "Did you hear about this?" that seem to relate to a person's disability.

## **TIPS FOR INTERACTING WITH PEOPLE WHO ARE BLIND \***

When you meet me, do not be ill at ease. It will help both of us if you remember these simple points of courtesy:

1. I'm an ordinary person, just blind. You don't need to raise your voice or address me as if I were a child. Don't ask my spouse what I want – "Cream in the coffee?" – ask me.
2. If I am walking with you, don't grab my arm; let me take yours. I'll keep a half step behind, to anticipate curbs and steps.
3. I want to know who is in the room with me. Speak when you enter. Introduce me to the others. Include children and tell me if there is a cat or dog. Guide my hand to a chair.
4. The door to a room, cabinet or to a car left partially open is a hazard to me.
5. At dinner, I will not have trouble with ordinary table skills.
6. Don't avoid words like "see." I use them too. "I'm always glad to see you".
7. I don't want pity. But don't talk about the "wonderful compensations" of blindness. My sense of smell, touch or hearing did not improve when I became blind. I rely on them more and, therefore, may get more information through those senses than you do – that's all.
8. If I'm your houseguest, show me the bathroom, closet, dresser, window – the light switch too. I would like to know whether the lights are on.
9. I'll discuss blindness with you if you're curious, but it's an old story to me. I have as many other interests as you do.
10. Don't think of me as just a blind person. I'm just a person who happens to be blind.

Note: In all states, the law requires drivers to yield the right of way when they see my extended white cane. Only the blind may carry white canes. You see more blind persons today walking alone. Not because there are more of us, but because we have learned to make our way.

\*From the National Federation of the Blind  
1800 Johnson Street, Baltimore, Maryland 21230  
Phone: 410-659-9314  
[www.nfb.org](http://www.nfb.org)

## **TIPS FOR TALKING TO A PERSON WITH HEARING LOSS**

- **FACE the hard of hearing person directly and on the same level whenever possible.**

Do not turn and walk away while still talking. When you walk away, the hard of hearing person can no longer hear you or read your lips.\*

- **KEEP your hands away from your face while talking.**
- **SPEAK in a normal fashion, without shouting. Speak clearly and more slowly than usual.**

If a person has difficulty understanding something, find a different way of saying the same thing rather than repeating the original words over and over.

Speak slowly. Sometimes it is difficult for a hard of hearing person to distinguish between background noise and speech.\*

- **NEVER talk from another room. Be sure to get the person's attention before you start speaking to him or her.**
- **REDUCE background noises when holding conversations – turn off the radio or TV.**

If you are eating, chewing, smoking, etc, while talking, your speech will be more difficult to understand.

- **MAKE sure that the light is not shining in the person's eyes when you are talking to him or her.**
- **RECOGNIZE that hard of hearing people hear and understand less well when they are tired or ill.**

\*Comments provided by a person with hearing loss.

FROM THE HEARING AND SPEECH CENTER OF NORTHERN CALIFORNIA  
1234 DIVISADERO STREET, SAN FRANCISCO, CA 94115  
415-921-7658 VOICE 415-921-8990 TTY

# **THE TEN COMMANDMENTS OF INTERACTING WITH PEOPLE WITH MENTAL HEALTH DISABILITIES**

## **I. Speak Directly.**

Use clear simple communications. Most people, whether or not they have a mental health disability, appreciate it. If someone is having difficulty processing sounds or information, as often occurs in psychiatric disorders, your message is more apt to be clearly understood. Speak directly to the person; do not speak through a companion or service provider.

## **II. Offer to Shake Hands When Introduced**

Always use the same good manners in interacting with a person who has a psychiatric disability that you would use in meeting any other person. Shaking hands is a uniformly acceptable and recognized signal of friendliness in American culture. A lack of simple courtesy is unacceptable to most people, and tends to make everyone uncomfortable.

## **III. Make Eye Contact and Be Aware of Body Language**

Like others, people with mental illness sense your discomfort. Look people in the eye when speaking to them. Maintain a relaxed posture.

## **IV. Listen Attentively**

If a person has difficulty speaking, or speaks in a manner that is difficult for you to understand, listen carefully — then *wait for them to finish speaking*. If needed, clarify what they have said. Ask short questions that can be answered by a “yes” or a “no” or by nodding the head. Never pretend to understand. Reflect what you have heard, and let the person respond.

## **V. Treat Adults as Adults**

Always use common courtesy. Do not assume familiarity by using the person’s first name or by touching their shoulder or arm, unless you know the person well enough to do so. Do not patronize, condescend, or threaten. Do not make decisions for the person, or assume their preferences.

## **VI. Do Not Give Unsolicited Advice or Assistance**

If you offer any kind of assistance, wait until the offer is accepted. Then listen to the person’s response and/or ask for suggestions or instructions. *Do not* panic or summon an ambulance or the police if a person appears to be experiencing a mental health crisis. Calmly ask the person how you can help.

## **VII. Do Not Blame the Person**

A person who has a mental illness has a complex, biomedical condition that is sometimes difficult to control, even with proper treatment. A person who is experiencing a mental illness cannot “just shape up” or “pull himself up by the bootstraps.” It is rude, insensitive, and ineffective to tell or expect the person to do so.

## **VIII. Question the Accuracy of the Media Stereotypes of Mental Illness**

The movies and the media have sensationalized mental illness. In reality, despite the overabundance of “psychotic killers” portrayed in movies and television, studies have shown that people with mental illness are far more likely to be *victims* of crime than to victimize others. Most people with mental illness never experience symptoms which include violent behavior. As with the general public, about 1% - 5% of all people with mental illness are exceptionally easily provoked to violence. (National Alliance for the Mentally Ill, 1990)

## **IX. Relax!**

The most important thing to remember in interacting with people who have mental health disabilities is to BE YOURSELF. Do not be embarrassed if you happen to use common expressions that seem to relate to a mental health disability, such as “I’m CRAZY about him” or “This job is driving me NUTS.” ASK the person how he feels about what you have said. Chances are, you get a flippant remark and a laugh in answer.

## **X. See the PERSON**

Beneath all the symptoms and behaviors someone with a mental illness may exhibit is a PERSON who has many of the same wants, needs, dreams and desires as anyone else. Don’t avoid people with mental health disabilities. If you are fearful or uncomfortable, learn more about mental illness. Kindness, courtesy, and patience usually smooth interactions with all kinds of people, including people who have a mental health disability.

Treat people with mental health disabilities as you would wish to be treated yourself.

Adapted by Mary Lee Stocks, MSW, LISW, from the *Ten Commandments of Communicating with People with Disabilities*, originally developed by the National Center for Access Unlimited/Chicago and United Cerebral Palsy Associations/Washington, D.C.; and a video and script developed by Irene M. Ward & Associates/Columbus, Ohio, partially supported through Ohio Development Disabilities Planning Council Grant #92-13 (1993)

person, not the person interpreting what's being said. If the person uses an amplifier or other device, don't touch it, as that's part of his or her personal space.

### Persons With Hearing Loss

If you need to attract the attention of a person with a hearing loss, touch him or her lightly on the shoulder or arm. When you speak to people with hearing loss, speak directly to them. With people who use sign language interpreters, speak to them, not to their interpreters. Face them so that they can see your lips. Slow your rate of speech, speak your words clearly, and increase your volume, if requested. Shouting usually doesn't help.

Not all people with hearing loss can read lips. For those people, other forms of communication may be necessary. Some may offer to write messages back and forth. For some, American Sign Language (ASL) is their first language, and they may require a sign language interpreter to understand proceedings or join in a conversation.

### Persons With Vision Loss

Be descriptive. Describe goings-on and surroundings, especially obstacles, to a blind person. You may need to help orient people with visual disabilities and let them know what's coming up. Be the assistant, not the director. If you're asked for assistance, let a blind person hold your arm as a guide.



If they're walking, tell them when they have to step up or step down; let them know if the door is to their right or left; and warn them of possible hazards.

You don't have to speak loudly to people with visual disabilities. Most of them can hear just fine. When appropriate, offer to read written information for a person with a visual disability. It's okay to ask blind people if they "see what you mean." If you're meeting a blind person, identify yourself. If you've met before, remind the person of the context because he or she won't have the visual cues to jog the memory.

### Persons With Learning Disabilities

Don't assume the person isn't listening merely because you're not getting any verbal or visual feedback. Instead, ask whether they understand or agree. Don't assume you have to explain everything to people with learning disabilities. They

don't necessarily have a problem with general comprehension. When necessary, offer to read written material aloud.

### Persons With Hidden Disabilities

Not all disabilities are apparent. A person may have difficulty following a conversation, may not respond when you call or wave, or may say or do something that seems inappropriate. The person may have a hidden disability such as poor vision, a seizure disorder, a hearing loss, a learning disability, a brain injury, a mental disability, or a health condition. These are just a few of the many different types of hidden disabilities. Don't make assumptions about the person or the disability. Be open-minded.

This pamphlet is the creation and responsibility of the Access and Fairness Advisory Committee of the Judicial Council of California. Points of view expressed herein do not necessarily represent the official positions or policies of the Judicial Council of California or the Administrative Office of the Courts.



This publication and the Access and Fairness Advisory Committee's other publications are available here:

[www.courtinfo.ca.gov/programs/access/publications.htm](http://www.courtinfo.ca.gov/programs/access/publications.htm)

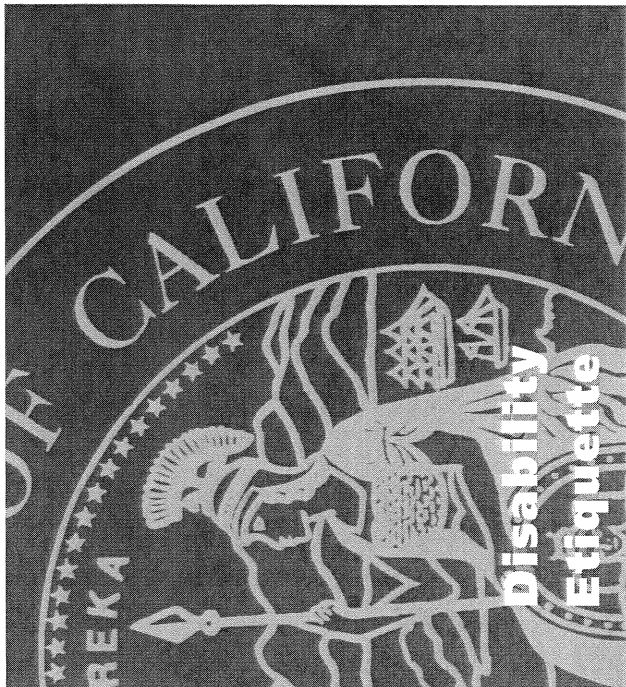
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JUDICIAL COUNCIL  
OF CALIFORNIA  
ACCESS AND FAIRNESS  
ADVISORY COMMITTEE



Interacting With Persons  
With Disabilities




## GENERAL ETIQUETTE

People with disabilities prefer that you focus on their abilities, not their disabilities. Always emphasize the person first. Avoid the terms "handicapped," "physically challenged," and other similar references. The preferred usage is "people with disabilities" or "persons with disabilities." The term "disabled people," although used, may be offensive because this term defines people as disabled first and people second.

Language is powerful, but attitudes and behaviors are the most difficult barriers for people with disabilities to overcome.

### Be Yourself



Treat people with disabilities with the same respect and consideration that you have for everyone else. Treat each person as an individual, not as a disability. Don't assume that disability is all that person can talk about or is interested in. Engage in small talk, the way you would with anyone. Use a normal voice when extending a verbal welcome. Don't raise your voice unless requested. As in any new situation, everyone will be more comfortable if you relax.

### Helping

Don't automatically give assistance. Ask first if the person wants help. Follow the person's cues and ask if you're not sure. Assistance with doors, as long as you're clear of the path, is usually very much appreciated. If your offer of assistance is accepted, listen or ask for instructions. Don't be offended if someone refuses your offer. It's his or her choice to be as independent as possible.

### Communication

People are considered to have communication disabilities when their ability to take in, give, or process information is limited.

Talk directly to the person, not to an aide or interpreter. It's important to make eye contact. If you don't understand someone, ask the person to repeat. If the person doesn't understand you when you speak, try again. Sometimes it takes several attempts at listening or speaking for communication to be successful. Let the person know that your communication with him or her is worthwhile to you. When appropriate, offer to make public information available in alternative formats such as Braille, audiotape, large print, or Web pages.

## PERSONS WITH SPECIFIC DISABILITIES

### Persons With Mobility Disabilities



A person in a wheelchair is a "wheelchair user" or a "person using a wheelchair." Talk directly to the person, not to an aide, and don't assume a companion is an aide. When having an extended conversation with someone in a wheelchair or scooter, try sitting or crouching down to his or her approximate height. It's okay to invite a person in a wheelchair to "go for a walk." Never touch or lean on a person's wheelchair unless you have permission—it's that person's personal space. Give a push only when asked. Enable people who use crutches, canes, walkers, wheelchairs, or scooters to keep their mobility aids within reach, unless they request otherwise. Be aware of what is and isn't accessible to people who use mobility aids such as wheelchairs and walkers.

People who use wheelchairs may have a variety of disabilities. Some have use of their arms, and some don't. When you meet such a person, extend your hand to shake if that's what you normally do. A person who can't shake your hand will let you know, and he or she will appreciate being treated in a normal way.

### Persons With Speech Disabilities


Listen patiently and carefully. Address persons with speech disabilities as you would anyone else in the same situation. Don't complete sentences for a person with a speech disability unless he or she specifically asks you for help. Don't pretend you understand what he or she says, just to be polite. Go to a quiet room if necessary. Don't let disabled people interrupt a person with a speech disability simply because they talk louder. If you don't understand what's said to you, ask the person to repeat it or to say it a different way.

Keep good eye contact. If a person with a speech disability is using a trained speech interpreter or relayer, speak to and keep eye contact with the

### Environments

Be sensitive about the setting in which you're communicating. A noisy or dark environment, or many people talking at the same time, may make it difficult for people with vision, speech, hearing, or some other hidden disabilities to fully participate in a conversation. Be aware of clear paths of travel for people who are blind or use wheelchairs or other mobility aids. Realize that a person with chemical sensitivity may have a reaction to smoke, perfume, or toxins in the environment.

### Socializing



Don't leave persons with disabilities out of a conversation or activity because you feel uncomfortable or fear that they'll feel uncomfortable. Include them as you would anyone else. They know what they can do and what they want to do. Let it be their decision whether to participate.

### Touching

You may gently touch people with disabilities to get their attention. Touch them when appropriate, such as when shaking hands in greeting or if they request your assistance. If you meet people with AIDS, shake their hands as you would with anyone else; you can't get AIDS by touching.

Don't touch someone's cane, wheelchair, or other assistive device. It's a part of that person's personal space. If you're interested in a demonstration of someone's electronic aid, ask. Don't try to use such equipment unless invited to do so. Guide dogs and other service animals are working animals; don't pet or touch them without specific permission.

## WEBSITE REFERENCE

- For court accommodations, please contact the ADA Coordinator. For general ADA questions, contact the Department of Justice ADA Hotline at 1-800-514-0301 or [www.ada.gov/infoline.htm](http://www.ada.gov/infoline.htm)
- For California access publications and court rules or forms, go to the California Judicial Council, Administrative Office of the Courts' website at: [www.courtinfo.ca.gov/programs/access/publications.htm](http://www.courtinfo.ca.gov/programs/access/publications.htm).
- For ADA resources at the courts, go to the **National Center for State Courts** at [www.ncsc.org](http://www.ncsc.org). (Phone: 800-616-6164)
- For general information and publications on access, go to:
  - [www.disabilityinfo.gov](http://www.disabilityinfo.gov) (U.S. Dept. of Health & Human Services)
  - [www.ada.gov](http://www.ada.gov) (U.S. Dept. of Justice)
  - [www.disabilityaccessinfo.ca.gov](http://www.disabilityaccessinfo.ca.gov) (The California Department of Rehabilitation)
- For the **Americans With Disabilities Act Accessibility Guidelines**, architectural and facilities standards, contact the U.S. Access Board at [www.access-board.gov](http://www.access-board.gov).
- For publications on the **Americans With Disabilities Act Title I and Title II** Technical Assistance Manuals, contact: EEOC Publications at 1-800-669-3362. Website: [www.eeoc.gov/eeoc/publications](http://www.eeoc.gov/eeoc/publications)
- For information on electronic accessibility, section 508 of the Rehabilitation Act, go to [www.section508.gov](http://www.section508.gov).
- For materials on **service animals**, go to [www.ada.gov](http://www.ada.gov) (U.S. Dept. of Justice).
- For a free online copy of the booklet on *Disability Awareness: How To Accommodate Persons With Disabilities* published by the State Bar of California, please go to: [http://calbar.ca.gov/state/calbar/calbar\\_extend.jsp?cid=10146&id=1191](http://calbar.ca.gov/state/calbar/calbar_extend.jsp?cid=10146&id=1191) or email michael.dayao@calbar.ca.go
- For information on the different types of disabilities and job accommodations for employees, contact the **Job Accommodation Network** at [www.askjan.org](http://www.askjan.org).